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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,614	11/04/2003	Daniel James Kinne	9422L	6503

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EXAMINER

CHAN, SING P

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/700,614

Applicant(s)

KINNE ET AL.

Examiner

Sing P. Chan

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/22/05.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 20060309.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 13 recites the broad recitation "at least two non-rotatable burnishes," and the claim also recites "two burnishes" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-7, 9, 11, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Buske (U.S. 3,907,628).

Regarding claims 1 and 2, Buske discloses an apparatus for applying a sheet material. The apparatus includes two burnishes having a generally planer surfaces, (88 and surface adjacent to 88), which subtend an included angle of at least 180° and each of the burnish is parallel to a major axis and whereby the applicator is rotated about the major axis in use that each of the burnish is capable of sequentially contacts the sheet being applied. (Col 6, line 48 to Col 7, lines 17 and Col 8, line 5-13, and Figures 5-7 and 8-10)

Regarding claim 3, the burnishes as disclosed by Buske includes an extrapolated vertex and offset from the burnishes. (Figures 1-4)

Regarding claim 5, the brushing strips as disclosed by Buske are of mutually different materials than the presser edges and protuberances. (Col 5, line 58-60)

Regarding claim 6, Buske discloses the burnishes subtend an angle of less than 180° opposite the surface of the burnishes and a guide member (12), which allow sheet material to be inserted into a cavity (14) and function as a holder.

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Regarding claim 7, Buske discloses the apparatus includes a cavity (14), which is disposed above one of the burnish when disposed against a vertical substrate. (Figures 1-4)

Regarding claim 9, Buske discloses the apparatus is form of any suitable materials, which is considered to include compliant material. (Col 3, line 62 to Col 4, line 11)

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Barbe et al (U.S. 4,711,682).

Barbe et al discloses a wallpaper applicator device. The device includes two elastomeric material bands on a pair of bevelled edges with five flat sides, which capable of being use as burnishes by rotating in sequentially contacts. (Col 2, lines 40-60 and Figures 1-5)

7. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Greene et al (U.S. 5,467,497).

Greene et al discloses an adjustable drywall corner tool. The tool includes a pair of engaging blades, i.e. burnishes, a hinge extends between mating edges of the blades, which capable of forming an angle of at least 270° degree on the outer surface with the vertex for the hinge is offset from the vertex of the handle, and the blades or burnishes are capable of being rotated sequentially into contact on a surface. (Col 1, line 53 to Col 2, line 8 and Figures 1-4)

8. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Forselius et al (U.S. 5,544,384).

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Forselius et al discloses a wall corner finishing tool. The tool includes a pair of plastic blades, i.e. burnishes, connected by a living hinge, i.e. vertex, offset from the vertex of the handle, which capable of forming any angle from 90°-270° degree on the outer surface, and the blades or burnishes are capable of being rotated sequentially into contact on a surface. (Col 2, lines 16-46 and Figures 1-5)

9. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Tonsager (U.S. 5,442,832).

Tonsager discloses an adjustable trowel. The tool or trowel includes a pair of planer blades hinged together, i.e. burnishes, at a vertex offset from the vertex of the handle, which are capable of forming any angle between 90°-270° degree on the outer surface, and the blades or burnishes are capable of being rotated sequentially into contact on a surface. (Col 2, lines 16-36 and Figures 1 and 2)

10. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Redmond (U.S. 4,545,090).

Redmond discloses a glass filled plastic hinge. The hinge includes plate members (12 and 18) with rounded outer edges, i.e. arcuate and outwardly facing surfaces, and the plate members are articulable relative to the each other about a hinge, which the edges is capable of being used as burnishes. (Figures 1 and 2)

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buske (U.S. 3,907,628) as applied to claim 9 above, and further in view of Takahashi (U.S. 4,026,648).

Buske as disclosed above does not disclose at least on burnish comprises felt. Buske does disclose a brushing strip for brushing loose particles and considered to be capable of also function as an additional burnish. And using felt to brush or clean loose particles from a surface is well known and conventional as shown for example by Takahashi. Takahashi discloses a cleaning means to remove particles from a surface includes paper, a pad with a sponge, felt, brush, or a cleaning blade such as rubber or plastic, (Col 5, lines 20-51) which are all equivalents.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least on burnish comprising felt or any other material as disclosed by Takahashi in the apparatus of Buske as to provide any means, which are equivalent to press and burnish the sheet material onto a surface.

#### ***Allowable Subject Matter***

13. Claims 8 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

14. Applicant's arguments filed February 6, 2006 have been fully considered but they are not persuasive.

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15. In response to applicant's argument of Buske does not disclose a flat burnish having a length and a width, and which can contact sheet material throughout the length and width, the examiner disagrees, since Buske recites other embodiments for the applicators included flat surfaces and adjacent flat surfaces, which is capable of being rotated into sequential contacts with the sheet. (See Buske, Figures 5-7 and 8-10) Therefore, the rejection base on Buske is proper and maintained.

16. This office action also includes additional rejections base on the amendments and newly found references, which read on claim 4.

10/700,614 **Conclusion**

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P. Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Thursday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Chan Sing P.*

SPC

*ca*  
**CHRIS FIORILLA**  
**SUPERVISORY PATENT EXAMINER**

*AU 1734*